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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN, on Behalf of Themselves and All Others Similarly Situated,,

Plaintiffs,

v.

AT&T CORP., et al.,

Defendants.

No. C-06-0672-VRW

CLASS ACTION

DECLARATION OF LEE TIEN REGARDING PARTIAL FILING OF DOCUMENTS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Courtroom: 6, 17th Floor
Judge: Hon. Vaughn Walker

Dockets.Justia.com

I, Lee Tien, hereby declare:

1. I am an attorney of record for Plaintiffs in this action and a member of good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

2. Plaintiffs have filed this Motion for Preliminary Injunction as an “empty box,” without filing the Memorandum of Points and Authorities in Support of the Motion and certain other supporting declarations and exhibits.

3. The purpose of this Declaration is to explain to the Court why Plaintiffs’ Motion for Preliminary Injunction has been filed without the supporting papers referenced above.

4. This case is a class action brought on behalf of all residential customers and subscribers of AT&T Corp. and AT&T Inc. (“Defendants”), claiming that Defendants are violating the Fourth Amendment of the Constitution and Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (“Title III”) by providing the government with direct access to the domestic and international Internet communications of millions of its customers.

5. Plaintiffs believe that AT&T has assisted and is assisting in the warrantless surveillance program admitted by the President of the United States, under which he authorized the National Security Agency (“NSA”) to engage in a program of covert, warrantless surveillance of communications of people in the United States – unchecked surveillance that he has declared will continue indefinitely.

6. Plaintiffs had planned to file their Motion for Preliminary Injunction and all supporting documents Thursday, March 30, 2006.

7. Among the supporting documents are three documents purporting to be AT&T documents. (collectively,“AT&T Documents”)

8. Plaintiffs’ Memorandum of Points and Authorities, as well as some of the Declarations, contain information derived from the AT&T Documents. In an abundance of caution, Plaintiffs prepared to lodge all of the documents consisting of or containing purported AT&T proprietary information (collectively, “the Documents”) with this Court under seal and with

a motion to unseal pursuant to Local Rule 79-5(d).

9. Pursuant to Local Rule 7-11(a), Plaintiffs contacted Defendants on March 30, 2006, to inform them that they intended to lodge the Documents pursuant to Local Rule 79-5(d). At Defendants' request, Plaintiffs emailed copies of the AT&T Documents to Defendants' counsel.

10. Soon thereafter, Plaintiffs were telephonically contacted by Defendants and the U.S. Government, which is not a party to this action.

11. Mr. Anthony Coppolino, Special Litigation Counsel of the U.S. Department of Justice in Washington, D.C., informed Plaintiffs that the AT&T Documents might contain or reflect classified information given the nature of this case, which challenges the legality of Defendants' participation in a government program of domestic warrantless surveillance.

12. Mr. Coppolino also stated that in such case it believed that lodging the AT&T Documents according to this Court's sealing procedures would be inadequate.

13. Mr. Coppolino requested that the U.S. Government be provided with copies of the AT&T Documents in order to advise the parties and the Court of their views before Plaintiffs lodged them with the Court, asking that the copies be delivered to Ms. Jo Ann Swanson of the U.S. Attorney's Office in the Federal Building at 450 Golden Gate Ave., San Francisco, where they could be transmitted to the Justice Department in Washington, D.C.

14. With the agreement of Defendants' counsel, Plaintiffs complied with the Government's request by hand-delivering copies of the AT&T Documents to Ms. Swanson at or about 4:30 pm on March 30, 2006.

15. Defendants stated during the telephone call that they did not object to the Plaintiffs' filing of a motion in order to preserve a hearing date with this Court.

16. Later that day, Plaintiffs proposed to Defendants and the U.S. Government a stipulated procedure to permit this Court to resolve the dispute in a timely, orderly manner.

17. On Friday, March 31, 2006, Mr. Coppolino told Plaintiffs that he had not yet received the AT&T Documents from the Government's representative in San Francisco and was unable to agree to any procedure at this time.

18. At this time, Plaintiffs are filing their Notice of Motion for a Preliminary

Injunction, the proposed Order for Preliminary Injunction, a Request for Judicial Notice (and proposed Order thereon) with attachments, all of which are available publicly, the Declaration of Plaintiff Carolyn Jewel, the Declaration of Cindy Cohn with exhibits, all of which are available publicly, and this Declaration of Lee Tien.

19. At this time, however, Plaintiffs are not filing their Memorandum of Points and Authorities in support of the Motion or the two other Declarations (and their accompanying exhibits) in support.

20. Plaintiffs believe that the AT&T Documents do not contain classified information, that the Court's procedures under Local Rule 79-5(d) are in any event adequate for initial filing, and that the AT&T Documents are not properly sealable pursuant to Local Rule 79-5.

21. Nevertheless, at least for a short while, Plaintiffs are accommodating the Government's request that the AT&T Documents not be filed in any manner.

22. If an agreement is reached, then the parties will advise the Court. Otherwise, Plaintiffs will seek intervention from the Court to determine how the documents should be handled.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 31st day of March, 2006, at San Francisco, California.

/s/ LEE TIEN
LEE TIEN

I, Reed R. Kathrein, am the ECF User whose ID and password are being used to file this DECLARATION OF LEE TIEN REGARDING PARTIAL FILING OF DOCUMENTS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION. In compliance with General Order 45, X.B., I hereby attest that Lee Tien has concurred in this filing.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via FedEx to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ REED R. KATHREIN
REED R. KATHREIN

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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